

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

§
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§
§

v.

CRIMINAL NO. 4:03CR96

CAROLYN L. MCCUALEY

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on May 21, 2012, to determine whether Defendant violated her supervised release. Defendant was represented by Frank Henderson. The Government was represented by Stevan Buys.

On November 3, 2003, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 63 months imprisonment followed by a five-year term of supervised release for the offense of Bank Fraud. Defendant began her term of supervision on October 2, 2007.

On June 1, 2012, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 29). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall pay restitution in the amount of \$48,790.14. Payment to begin immediately. Any amount that remains unpaid when Defendant is placed on supervision is to be

paid on a monthly basis at a rate of at least 10% of Defendant's monthly gross income, to be changed during supervision if needed, based on Defendant's changed circumstances, pursuant to 18 U.S.C. § 3664(k); and (3) Under the guidance and direction of the U.S. Probation Office, Defendant shall participate in any combination of psychiatric, psychological, or mental health treatment as deemed appropriate by the treatment provider.

The Petition alleges that Defendant committed the following violations: (1) As previously reported to the Court, on December 14, 2009, Defendant was arrested and charged with Credit Card Abuse in Case No. F-093540-7, which remains pending in Dallas County Criminal District Court No. 3. On October 14, 2011, Defendant was arrested by Richardson Police Department and charged with Theft of Property - \$20,000 to \$100,000. The case was filed in Case No. F-1145826 in Dallas County, and remains pending. On January 11, 2012, Defendant was indicted in the Eastern District of Texas, Sherman Division in Case No. 4:12cr14, charged with Unlawful Use of a Means of Identification, and Unlawful Use of an Unauthorized Access Device. Defendant will appear in Court for the Initial Appearance on February 8, 2012, in the Eastern District of Texas; (2) Defendant failed to make restitution payment for the months of January through June, 2008; and September through December 2008; January, April, July, and August 2009, January through November 2010, January through April, 2011, and June through December 2011, and January 2012; and (3) Defendant failed to attend scheduled treatment sessions at Pillar Counseling on March 17, 2010, March 31, 2010, May 14, 2010, and January 19, 2011.

At the hearing, Defendant entered a plea of true to the alleged violations. The Court then heard argument from Defendant's counsel and Defendant herself as to the proposed sentence. The

Court finds that Defendant has violated the terms of her supervised release and that his supervised release should be revoked.

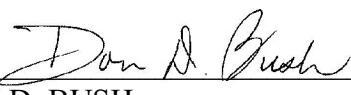
RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the May 21, 2013 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, to be served consecutively with any other sentences, with thirty-three (33) months supervised release to follow.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 267-77 (5th Cir. 1988).

SIGNED this 23rd day of May, 2013.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE